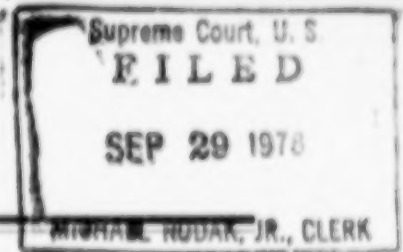


No. 77-648



In the Supreme Court of the United States

OCTOBER TERM, 1978

FEDERAL ENERGY REGULATORY COMMISSION,
Petitioner,

v.

PENNZOIL PRODUCING COMPANY, *et al.*,
Respondents.

On Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit

**MEMORANDUM FOR RESPONDENT
MOBIL OIL CORPORATION**

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September 29, 1978

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MEMORANDUM FOR RESPONDENT
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Mobil Oil Corporation (Mobil), a respondent in this case, submits this memorandum in response to the brief filed on behalf of the petitioner Federal Energy Regulatory Commission (the Commission):

1. This case should be held in abeyance pending review and decision by this Court in *Mobil Oil Corporation v. Harry Lightcap, et al.*, No. 76-1694.

2. In No. 76-1694, Mobil seeks review of the decision of the Supreme Court of Kansas in *Harry Lightcap v. Mobil Oil Corporation*, 221 Kan. 448, 562 P.2d 1 (1977).

The major question presented is whether a state court is barred, as a matter of law, from determining royalty payments for regulated sales of natural gas on the basis of unregulated "market values." When that case is reached on the merits, Mobil will show that the Natural Gas Act pre-empts the relevant "market" for determining the amount of royalty for sales regulated under the Act, and that the Supremacy and Commerce clauses of the United States Constitution preclude entry by a court of a judgment in collateral litigation based on "values" derived from the unregulated intrastate market. The result of such conclusions will be that for a regulated sale, the royalty payment is limited by the rates prescribed by the Commission in the exercise of its jurisdiction under the Natural Gas Act.

3. In No. 76-1694, the petition for writ of certiorari was denied, but Mobil's petition for rehearing is pending. That petition is supported by a memorandum filed by the Solicitor General on behalf of the Commission urging that the petition be granted and the Court hear the case and concurring with Mobil's position on the merits. The Court requested a response to the petition for rehearing which has been filed by counsel for Harry Lightcap, et al., and the petition for rehearing is now ripe for disposition by the Court.

4. A decision by this Court in No. 76-1694 consistent with the positions of Mobil and the Commission in that case will render the questions presented in this case moot. In this case, the questions are whether the Natural Gas Act permits or requires the Commission to allow a regulated producer to pass on to pipeline customers increases in royalty payments based on unregulated intrastate "market value" determined in collateral litigation between the producer and royalty owners, or, alternatively, whether "abandonment" under Section 7(b) of the Act must be allowed as to the royalty interest gas

under such circumstances. If in No. 76-1694, it is concluded that the Natural Gas Act operates to pre-empt the "market" for regulated sales, royalty payments will be based on rates no higher than those prescribed by the Commission for producers' sales; there will be no increases based on higher "market values" determined in collateral litigation to be passed on to pipelines, their customers, and interstate consumers; and there will be no occasion for the Commission to reach questions such as those raised in this case. The relevant "market" for regulated sales will be determined and controlled by Commission-prescribed ceilings, and the issues presented here will be moot.

5. This Court's consideration of and decision in No. 76-1694 thus should precede the Court's consideration of the questions presented in this case.

For the foregoing reasons, Mobil urges the Court to hold this case in abeyance until after decision by the Court on the merits in *Mobil Oil Corporation v. Harry Lightcap, et al.*, No. 76-1694.

Respectfully submitted,

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